

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

SHANNA GARNER

(b) County of Residence of First Listed Plaintiff BUCKS  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)  
CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.  
30 EAST BUTLER PIKE, AMBLER, PA 19002  
PHONE: (215) 540-8888 EXT. 116**DEFENDANTS**

CITIBANK, N.A.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT   | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance   | <b>PERSONAL INJURY</b>   | <b>PERSONAL INJURY</b>   | <b>PROPERTY RIGHTS</b>   | <input type="checkbox"/> 375 False Claims Act   |
| <input type="checkbox"/> 120 Marine  | <input type="checkbox"/> 310 Airplane                              | <input type="checkbox"/> 365 Personal Injury - Product Liability                           | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment  |
| <input type="checkbox"/> 130 Miller Act  | <input type="checkbox"/> 315 Airplane Product Liability            | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust  |
| <input type="checkbox"/> 140 Negotiable Instrument                                   | <input type="checkbox"/> 320 Assault, Libel & Slander              | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability                    |  | <input type="checkbox"/> 430 Banks and Banking  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment       | <input type="checkbox"/> 330 Federal Employers' Liability          | <input type="checkbox"/> 340 Marine  |  | <input type="checkbox"/> 450 Commerce   |
| <input type="checkbox"/> 151 Medicare Act  | <input type="checkbox"/> 345 Marine Product Liability              | <input type="checkbox"/> 350 Motor Vehicle   | <input type="checkbox"/> 460 Deportation                         | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations                   |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 355 Motor Vehicle Product Liability       | <input type="checkbox"/> 370 Other Fraud   | <input type="checkbox"/> 480 Consumer Credit                     | <input type="checkbox"/> 490 Cable/Sat TV   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits           | <input type="checkbox"/> 360 Other Personal Injury                 | <input type="checkbox"/> 371 Truth in Lending  | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 850 Securities/Commodities Exchange                                  |
| <input type="checkbox"/> 160 Stockholders' Suits                                     | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 380 Other Personal Property Damage                                | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 890 Other Statutory Actions  |
| <input type="checkbox"/> 190 Other Contract  |  | <input type="checkbox"/> 385 Property Damage Product Liability                             | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 891 Agricultural Acts  |
| <input type="checkbox"/> 195 Contract Product Liability                              |  |  |  | <input type="checkbox"/> 893 Environmental Matters  |
| <input type="checkbox"/> 196 Franchise   |  |  |  | <input type="checkbox"/> 895 Freedom of Information Act                                       |
|  |  |  |  | <input type="checkbox"/> 896 Arbitration  |
|  |  |  |  | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
|  |  |  |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                              |
| REAL PROPERTY  | CIVIL RIGHTS   | PRISONER PETITIONS   | SOCIAL SECURITY  |   |
| <input type="checkbox"/> 210 Land Condemnation                                       | <input type="checkbox"/> 440 Other Civil Rights                    | Habeas Corpus:   | <input type="checkbox"/> 861 HIA (1395ff)                        |   |
| <input type="checkbox"/> 220 Foreclosure   | <input type="checkbox"/> 441 Voting                                | <input type="checkbox"/> 463 Alien Detainee  | <input type="checkbox"/> 862 Black Lung (923)                    |   |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                                  | <input type="checkbox"/> 442 Employment                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                                    | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                  |   |
| <input type="checkbox"/> 240 Torts to Land   | <input type="checkbox"/> 443 Housing/ Accommodations               | <input type="checkbox"/> 530 General   | <input type="checkbox"/> 864 SSID Title XVI                      |   |
| <input type="checkbox"/> 245 Tort Product Liability                                  | <input type="checkbox"/> 445 Amer. w/Disabilities Employment       | <input type="checkbox"/> 535 Death Penalty Other:  | <input type="checkbox"/> 865 RSI (405(g))                        |   |
| <input type="checkbox"/> 290 All Other Real Property                                 | <input type="checkbox"/> 446 Amer. w/Disabilities Other            | <input type="checkbox"/> 540 Mandamus & Other  |  |   |
|  | <input type="checkbox"/> 448 Education                             | <input type="checkbox"/> 550 Civil Rights  |  |   |
|  |  | <input type="checkbox"/> 555 Prison Condition  |  |   |
|  |  | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                    |  |   |
|  |  |  | FEDERAL TAX SUITS  |   |
|  |  | <input type="checkbox"/> 791 Employee Retirement Income Security Act                       | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |   |
|  |  |  | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         |   |
|  |  |  | IMMIGRATION  |   |
|  |  |  | <input type="checkbox"/> 462 Naturalization Application          |   |
|  |  |  | <input type="checkbox"/> 465 Other Immigration Actions           |   |

**V. ORIGIN** (Place an "X" in One Box Only)

- |  |   |  |   |  |   |
|--|---|--|---|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|--|---|--|---|--|---|

VI. CAUSE OF ACTION  
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
47 U.S.C. § 227 et seq.Brief description of cause:  
TELEPHONE CONSUMER PROTECTION ACT**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER RULE 23, F.R.Cv.P.**DEMAND S**CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/10/2015

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 27 Viking Lane, Levittown, PA 19054

Address of Defendant: 701 East 60th Street, Sioux Falls, SD 57117

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases

11.  All other Federal Question Cases

(Please specify) 47 U.S.C. § 227 et seq.

B. Diversity Jurisdiction Cases:

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify)
- Products Liability
- Products Liability — Asbestos
- All other Diversity Cases

(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL,

counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 07-10-15

\_\_\_\_\_  
Attorney-at-Law

57100

\_\_\_\_\_  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07-10-15

\_\_\_\_\_  
Attorney-at-Law

57100

\_\_\_\_\_  
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

SHANNA GARNER  
v.

CITIBANK, N.A.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (x)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

07-10-15  
Date

  
Attorney-at-law

Plaintiff, Shanna Garner  
Attorney for

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

SHANNA GARNER, )  
Plaintiff )  
v. ) Case No.:  
CITIBANK, N.A., ) COMPLAINT AND DEMAND FOR  
Defendant ) JURY TRIAL

**COMPLAINT**

SHANNA GARNER ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against CITIBANK, N.A. ("Defendant"):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

#### **JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in Levittown, Pennsylvania  
19054.

6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located at 701 East 60<sup>th</sup> Street, North P.O. Box 6500, Sioux Falls, South Dakota 57117.

8. Defendant is a "person" as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that she has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in early September 2014, and continuing through October,  
Defendant repeatedly called Plaintiff on her cellular telephone.

1       14. When contacting Plaintiff on her cellular telephone, Defendant used  
2 an automatic telephone dialing system and automatic and/or pre-recorded  
3 messages.

4       15. Defendant's automated messages identified its company name as the  
5 caller.  
6

7       16. Defendant's telephone calls were not made for "emergency  
8 purposes."

9       17. On the occasions in which Plaintiff answered, she would be met with  
10 "dead air", and then after delay, a representative would pick up.  
11

12       18. In September 2014, Plaintiff spoke with Defendant and told them to  
13 stop calling her.  
14

15       19. Defendant heard Plaintiff's instructions to stop calling her cellular  
16 telephone.  
17

18       20. Defendant, however, ignored Plaintiff's instructions to stop calling  
19 and revocation of any prior consent; rather, Defendant continued to call Plaintiff on  
20 her cellular telephone without her express prior permission.  
21

22       21. For example, Defendant called Plaintiff on: September 30, 2014, at  
23 4:10 p.m.; October 4, 2014, at 2:09 p.m.; October 5, 2014, at 7:17 p.m.; October 6,  
24 2014, at 10:52 a.m., 1:25 p.m., and 3:55 p.m.; October 7, 2014, at 1:38 p.m. and  
25

1 4:09 p.m.; October 8, 2014, at 10:45 a.m., 1:39 p.m., and 4:11 p.m.; October 9,  
2 2014, at 5:23 p.m.; October 10, 2014, at 10:46 a.m., 1:38 p.m., and 4:09 p.m.

3 22. As a result, Plaintiff was forced to block the above referenced number  
4 in order to avoid future calls from Defendant.  
5

6 **DEFENDANT VIOLATED THE  
7 TELEPHONE CONSUMER PROTECTION ACT**

8 23. Plaintiff incorporates the forgoing paragraphs as though the same were  
9 set forth at length herein.

10 24. Defendant initiated multiple automated telephone calls to Plaintiff's  
11 cellular telephone using a prerecorded voice and without her express prior consent.  
12

13 25. Defendant initiated these automated calls to Plaintiff using an  
14 automatic telephone dialing system.

15 26. Defendant's calls to Plaintiff were not made for emergency purposes.

16 27. Defendant's calls to Plaintiff, in and after September 2014, were not  
17 made with Plaintiff's prior express consent.

18 28. Defendant's acts as described above were done with malicious,  
19 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
20 under the law and with the purpose of harassing Plaintiff.  
21

22 29. The acts and/or omissions of Defendant were done unfairly,  
23 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
24 lawful right, legal defense, legal justification or legal excuse.  
25

30. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SHANNA GARNER, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
  - b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
  - c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
  - d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
  - e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, SHANNA GARNER, demands a jury trial in this case.

1  
RESPECTFULLY SUBMITTED,

2 DATED: 07/10/15

3 KIMMEL & SILVERMAN, P.C.

4 By: \_\_\_\_\_

5 CRAIG THOR KIMMEL

6 Attorney ID # 57100

7 Kimmel & Silverman, P.C.

8 30 E. Butler Pike

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